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FISCAL IMPACT STATEMENT

LS 6900

BILL NUMBER: SB 182

NOTE PREPARED: Feb 19, 2009

BILL AMENDED: Feb 19, 2009

SUBJECT: Criminal History Checks.

FIRST AUTHOR: Sen. Lubbers

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill exempts a postsecondary educational institution from paying a fee for a limited criminal history record of a student in the institution's school of education before the student begins the student's field or classroom experience, but specifies that the student may be required to pay a fee.

The bill requires an expanded criminal history background check for a person seeking employment with a school, and provides that the person is responsible for all costs associated with obtaining the expanded criminal history check.

The bill also requires the superintendent of a school corporation, or the equivalent officer for a nonpublic school, to notify the State Superintendent when final action is taken against an employee who engaged in certain criminal offenses. The bill requires the Department of Education to maintain a searchable database of employees and former employees who have been convicted of certain offenses or subject to final action based on the conviction of certain offenses. It also adds possession of child pornography to the list of offenses requiring permanent revocation of teacher's license.

Effective Date: (Amended) July 1, 2009; January 1, 2010.

Explanation of State Expenditures: (Revised) *Postsecondary Education Institutions Fee Exemption:* The number of requests made by postsecondary education institutions for the limited criminal history background information of incoming students is currently not known. Postsecondary education institution expenditures may decrease to the extent they currently request and pay this fee.

Phone interviews with selected state universities revealed that the policies regarding payment for criminal

background checks in postsecondary education institutions varied across the board; sometimes the burden fell on the student, and sometimes the institution funded the cost of the check. Actual numbers of criminal background checks by postsecondary institutions was indeterminable because each institution has different policies regarding background checks for students and few kept data on how many background checks they had requested in years past.

(Revised) *Indiana State Police*: As proposed, the Indiana State Police (ISP) could experience an increase in workload if postsecondary institutions demand more limited criminal history checks. If postsecondary institutions are exempt from fees used to pay for processing these requests, ISP would have to manage the additional workload within their current level of resources.

ISP may also experience increases in workload to the extent new school employees request national criminal history information to meet the requirements of the bill. Any change in workload that ISP might experience from a decrease in limited criminal history information requests may be offset with an increase in the number of national criminal history information requests. Any change in workload will depend on differing processing times required for each type of criminal history request. [Note: ISP reverted \$3.1 M to the General Fund at the end of FY 2008.]

(Revised) *Department of Education Database*: The bill requires the Department of Education (DOE) to develop a database to maintain information regarding school corporation employees who have been reported for felony convictions that result in the revocation of a teaching license. DOE reported they currently have a data system that can track the required information contained in the bill. DOE would experience a minimal increase in staff workload to operate the database as well as train local school corporations in proper use of the database.

(Revised) *Background Information on Criminal History Checks*: Fees for name-based limited criminal history background checks are as follows: \$16.32 for persons who do not subscribe to AccessIndiana, \$15 for AccessIndiana subscribers, or \$7 by mail. [Note: Current statute refers to these checks as limited criminal history checks.]

A name-based limited criminal history check is defined as a criminal history check that searches within the state any criminal activity associated with a person's legal name(s). This check must include (1) a disposition and (2) a photograph of the person who is the subject of the limited criminal history, if a photograph is available. The term includes information about any arrest or criminal charge that occurred less than one year before the date of a request even if no disposition has been entered. A limited criminal history background check is obtained through the ISP.

The bill defines that an expanded name-based criminal history check includes (1) a search of the records maintained by all counties in Indiana or in another state where the applicant resided within the past seven years from the date of request, and (2) a check of either the sex offender registries in all 50 states or the National Sex Offender registry maintained by the U.S. Department of Justice. Additionally, a national criminal history background check and a check of the sex offender registries in all 50 states or the National Sex Offender Registry will meet the requirements of an expanded name-based criminal history background check.

A national criminal history background check is defined as a fingerprint-based check that uses the Federal Bureau of Investigation's (FBI) Automated Fingerprint Identification System (AFIS) to match an applicant's

fingerprints to any crimes committed by that applicant nationally or any other method of positive identification. A national criminal history background check does not provide a search of the National Sex Offender Registry or the sex offender registries maintained by the 50 states. A national criminal history background check is also obtained through the ISP.

A criminal history check review challenge occurs when an applicant who received a name-based limited criminal history check challenges the results by submitting to a fingerprint-based criminal background check performed by the ISP.

The ISP reports that an applicant fingerprint vendor has recently been selected and that the final price for the fingerprint transaction has yet to be finalized. This contract will allow the Records Division of the ISP to receive applicant fingerprint cards electronically and will result in more efficient operations in the Records Division by decreasing workload and increasing response time for requested background checks. The selection of a fingerprint vendor may influence revenue to the General Fund, as well as the workload of the ISP under the bill. Actual impact on workload and revenue is indeterminable as information regarding the vending contract is not currently available.

Explanation of State Revenues: (Revised) *Limited Criminal History Check for Teachers Applying for Employment:* If new school employees are required to obtain national criminal history background checks, an estimated \$57,800 of revenue will be deposited in the General Fund each year. The Department of Education reports that for academic year 2007-2008, there were approximately 3,368 new teachers out of 74,000 licensed teachers in the state of Indiana. Additionally, of 10,676 administrators and other noncertified public school employees, it was estimated that 486 individuals would be new employees. For information on national criminal history background check fees, see Table A.

This estimate (1) may not reflect precisely the number of noncertificated employees and administrators in public schools, (2) does not include an estimate for noncertificated employees and administrators of private schools, and (3) does not include teachers and noncertificated employees who transfer between schools, who all would be subject to the criminal history requirements contained in the bill.

Table A: Local School Criminal Background Check, Current Law and As Proposed.		
	Current Law	As Proposed
Type of Check and Requirement	Schools are required to have a policy regarding criminal history information for all new employees. However, current law does not require schools to require criminal history information. Depending on school corporation or charter school policy, new employees <u>may</u> be required to submit a limited criminal history check or a national criminal history check for new hires.	All individuals applying for employment with a school corporation would be required to obtain either an expanded criminal history check or a national criminal history check and have a search performed of either (1) the National Sex Offender Registry or (2) the sex offender registries for all 50 states.
Fee	<u>Limited</u> : \$16.32 for persons who do not subscribe to AccessIndiana, \$15 for AccessIndiana subscribers, and \$7 by mail; fee is waived for school corporations; or <u>National</u> : \$32.25, \$15 of which is deposited into the state General Fund, \$17.25 is forwarded to the federal government.	National criminal history check: \$32.25, \$15 of which is deposited into the state General Fund, \$17.25 is forwarded to the federal government. The fees to complete an expanded criminal history check and a search of the sex offender registries in all 50 states or the National Sex Offender Registry are not known. However, no revenue would be forwarded to state/local governments.
Fee Responsibility	Depending on school policy, applicants for employment <u>may</u> be responsible for all costs associated with obtaining criminal history information.	Applicants for employment would be responsible for all costs associated with obtaining criminal history information.

(Revised) *Postsecondary Schools of Education Fee Exemption*: To the extent a postsecondary education institution currently obtains a name-based limited criminal history check for the purposes of the bill and the ISP did not charge the student, the state would experience a decrease in revenue to the state General Fund and the IOT Portal Fund. Actual decreases would depend on the number of requested name-based limited criminal history check by the school, the method in which the check was obtained, and the fee paid for the check. Postsecondary education institutions will experience a decrease in expenditures only to the degree they were paying for criminal background checks for students prior to this bill.

Under current law, a person may request a criminal history check review challenge (fingerprint identification is required) after having obtained a limited criminal history check (can be obtained through subject or fingerprint identification). As proposed, the number of name-based limited criminal history checks could increase, impacting the number of criminal history check review challenges for the state. If criminal history review challenges increase as a result of this bill, revenue to the General Fund can increase by fees paid for these requests. Currently, ISP charges \$10 per review challenge. Actual increases of review challenges is indeterminable.

Modification of Criminal History Check Policy: Fees vary for limited criminal history background checks and depend on the method in which the information is obtained. Revenue from fees collected is deposited into the state General Fund and the IOT Portal Fund. Currently, individuals challenge the results of a name-based criminal background check by requesting a fingerprint-based review challenge. Fees are assessed for a review challenge and these fees are deposited in the General Fund. Any change in revenue would depend on the number of persons currently requesting a review challenge (for which the state would experience a decrease of \$10 per

review challenge) and the number of people who would, under the bill, obtain a name-based expanded criminal history check (for which the state would experience no increase in revenue) and then subsequently obtain a review challenge (for which the state would experience an increase in revenue of \$10 per review challenge).

(Revised) *Background Information:* In FY 2007, ISP reports that criminal background checks generated \$2.3 M in revenue for the General Fund.

Fees for limited criminal history background checks are as follows: \$16.32 for persons who do not subscribe to AccessIndiana, \$15 for AccessIndiana subscribers, or \$7 by mail. Limited criminal history requests that are made by mail or through AccessIndiana provide \$7 per request to the General Fund. Requests made online produce either \$8 or \$9.32 to the Indiana Office of Technology, dependent upon if the request is made by an AccessIndiana subscriber or not.

Explanation of Local Expenditures: (Revised) *Criminal Background Check Requirement:* The bill specifies that an applicant for employment with a school corporation is responsible for all costs associated with obtaining criminal history information. Current law is silent on this responsibility, and DOE reports that currently some schools will finance the costs of obtaining criminal history information. This may reduce school expenditures to the extent that schools no longer finance the costs of obtaining criminal history information.

Explanation of Local Revenues:

State Agencies Affected: ISP; DOE; IOT; Postsecondary schools of education.

Local Agencies Affected: Local school corporations and townships; Charter schools

Information Sources: Major Doug Shelton, ISP, (317) 232-8265; Indiana Department of Education Databases; ISP Record Division, ISP Website (www.in.gov/isp); Dean Mark Ferguson, Vincennes University, (812) 888-4301; Kathy Herald, Ball State University College of Nursing, (765) 285-1834; Tom Warner, Ball State University Associate Vice President for Business Affairs, (765) 285-1133; Cindy Wise, Indiana University, (812) 855-9845; Cathy Sleeth, Purdue University (765) 494-5927; Debbie Hineline, Indiana Department of Education, (317) 232-0840; Neil Ruddock, Indiana Department of Education, (317) 232-6671; <http://www.instantcriminalchecks.com>.

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